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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF
AMERICA

Plaintiff,

v.

SCOTT J. WALLS,

Defendant.

NO. CR-05-149-FVS

MEMORANDUM IN SUPPORT OF
MOTION FOR SENTENCE OUTSIDE
SENTENCING GUIDELINES

October 5, 2006; 10:00 a.m.

COMES NOW the Defendant, SCOTT WALLS, by and
through his attorney, Carl J. Oreskovich of Holden &
Oreskovich, P.S., and sets forth the following
Memorandum in Support of Sentence Outside Guideline
Range.

1. Review of Presentence Investigation

The Defendant has reviewed the Presentence Report,
as well as the Addendum Presentence Report, and has no

1 objections.

2 **2. Offense Level**

3 The Defendant agrees that the base offense level is
4 eight (8) as outlined in the PSR. (PSR, PG. 6, ¶21).
5 The Defendant further agrees that the base offense
6 level is increased by ten (10) levels due to the amount
7 of loss being determined to be \$175,000, (PSR, pg. 6,
8 ¶22), and increased two (2) levels due to the offense
9 involving the manufacture, importation, or uploading of
10 infringing items. (PSR, pg. 6, ¶23). If the Court
11 grants a three (3)-level reduction for timely
12 acceptance of responsibility, pursuant to U.S.S.G. §
13 3E1.1 and Plea Agreement pg. 9, ¶80, *the adjusted*
14 *offense level would be seventeen (17).*

15 **3. Criminal History Category**

16 The Defendant agrees that the Criminal History
17 Category is I (PSR pg. 8, ¶43).

18 **4. Government's Motion for Downward Departure**

19 The United States has moved for a 5-level departure
20 pursuant to U.S.S.G. § 5K1. The Defendant requests
21 that the Court give, at a minimum, a 5-level departure,
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1 requested by the Government pursuant to U.S.S.G. §
2 5K1.1 for the Defendant's substantial assistance. The
3 resulting offense level would be a level 12, with a
4 Criminal History Category 1, and would provide for a
5 Zone C sentence of 10 to 16 months of imprisonment.
6 The Government has recommended 10 months of
7 imprisonment, the low end of the guideline.
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10 **5. Motion for Sentence Outside the Guidelines**

11 The Defendant moves this Court, pursuant to 18 USC
12 § 3553(a), for a sentence of probation, pursuant to
13 either Zone A or Zone B of the Guidelines (U.S.S.G. §
14 5C1.1), which is a sentence below the Guideline range
15 of 10 to 16 months. Defendant's request is based upon
16 the nature and circumstances of the offense, the
17 history and characteristics of the Defendant, as well
18 as the Defendant's participation in the offense.
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21 **6. Applicable Law**

22 A post-Booker sentence imposed under the advisory
23 Sentencing Guidelines is reviewed for reasonableness.
24 See United States v. Booker, 543 U.S. 220, 261, 125
25 S.Ct. 738, 160 L.Ed.2d 621 (2005); United States v.
26

1 Cantrell, 433 F.3d 1269, 1280 (9th Cir.2006).

2 A district court should use the Guidelines as a
3 starting point to calculate a sentence, but cannot
4 presume the Sentencing Guidelines prescribe the
5 appropriate sentence absent proof to the contrary. See
6 United States v. Zavala, 443 F.3d 1165, 1170 (9th
7 Cir.2006).

8
9 18 USC § 3553(a), in pertinent part, sets forth the
10 factors a sentencing court should consider in
11 fashioning a reasonable sentence. It states the court
12 shall impose a sentence sufficient, but not greater
13 than necessary, to comply with the purposes set forth
14 in paragraph (2) of this subsection. The court, in
15 determining the particular sentence to be imposed,
16 shall consider:
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19
20 (1) the nature and circumstances of the
21 offense and the history and characteristics of the
22 defendant;
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24 (2) the need for the sentence imposed.

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26 (3) the kinds of sentences available;

1 (4) the kinds of sentence and the sentencing
2 range established for.

3 (5) any pertinent policy statement.

4
5 (6) the need to avoid unwarranted sentence
6 disparities among defendants with similar records
7 who have been found guilty of similar conduct; and

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9 (7) the need to provide restitution to any
10 victims of the offense.
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13 In the "broader appraisal," available to
14 district courts after Booker, courts can
15 justify consideration of family
16 responsibilities, an aspect of the defendant's
17 "history and characteristics," 18 USC §
18 3553(a)(1), for reasons extending beyond the
19 Guidelines. "District courts now ... have the
20 discretion to weigh a multitude of mitigating
21 and aggravating factors that existed at the
22 time of mandatory Guidelines sentencing, but
23 were deemed 'not ordinarily relevant,' such as
24 age, education and vocational skills, mental
25 and emotional conditions, employment record,
26 and *family ties and responsibilities*." United
States v. Ameline, 409 F.3d 1073, 1093 (9th
Cir.2005) (en banc) (Wardlaw, J., concurring
in part and dissenting in part) (emphasis
added). The difficulty of providing
appropriate care for a child of a single
parent may, when balanced against factors such
as the nature of the offense, § 3553(a)(1),
deterrence to criminal conduct, §
3553(a)(2)(B), and protection of the public, §

3553(a)(2)(C), warrant a sentence outside the Guidelines.

B. Personal Characteristics and History of the Defendant

The Defendant, Scott Walls, was born on January 16, 1960, in Fort Riley, Kansas. He is 46 years old, has been married twice, and has two children, ages 23, 18 from his first marriage, and one child, age 12, from his second. He has been married to Leslie Walls since 1992, and their 12 year old resides in their home.

Mr. Walls has a limited education. He attended Bozeman Sr. High School in Bozeman, Montana, through the 11th grade, and ultimately obtained a GED Certificate. Mr. Walls has a long and extensive employment history. In particular, he has loyally worked for the MGM Grand, Inc., an excavation company located in Airway Heights, Washington, since 1988. He began his career with MGM Grand, Inc. as a laborer, and worked up through the ranks as a job foreman. For the past two years, he has been project manager for the company. Those job responsibilities include estimating

1 job bids, billing, project management and running the
2 office computer network. With the exception of a basic
3 computer training, Mr. Walls' computer skills have been
4 self learned.

5
6 Uniquely, for the last 10 years, Scott and Leslie
7 Walls have been caretakers of children suffering from
8 Downs Syndrome. The involvement began when a member of
9 their church advised them of a young boy who was
10 suffering from Downs Syndrome who was without a home to
11 live. The Walls obtained training and took the child
12 into their home for several years. Most recently, for
13 the past 8 years, Mr. and Mrs. Walls have been the
14 caretakers of JB, another Downs Syndrome person. Mr.
15 and Mrs. Walls share the 24 hour responsibility of
16 taking care of JB in their home. The Defendant, Scott
17 Walls, works at his job at MGM Grand 5 days a week and
18 returns home to provide care for JB in the evenings,
19 and spends each Saturday and Sunday with him. As the
20 Court may be well aware of, the responsibilities of
21 taking care of a person with Downs Syndrome is
22 significant, onerous and emotionally draining. It is a

1 task that Mrs. Walls cannot perform on her own, if, in
2 fact, Scott Walls is incarcerated. Albeit that Mr. and
3 Mrs. Walls have never adopted JB, he has been a member
4 of their family for the past 8 years. He is loved and
5 taken care of. The role of Mr. and Mrs. Walls as
6 caretakers of JB, and their relationship with him is a
7 unique, personal and family characteristic that this
8 Court should consider in imposing a sentence below the
9 Guidelines.
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12 Defendant submits that an additional factor under
13 18 USC § 3553(a) exists that in a reasonable exercise
14 of discretion favors a sentence below the advisory
15 Guideline range.
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17 Information charges a conspiracy to commit
18 copyright infringement beginning in November, 2002,
19 through April 24, 2004. At the ending date of the
20 conspiracy, Mr. Walls' home was search, he confessed
21 his involvement to the FBI and then became a
22 significant contributor to later search warrants and
23 indictments. The Defendant recognizes that Government
24 has moved this Court for a 5-level departure based upon
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1 the Defendant's substantial assistance.

2 However, the defense would like to make two
3 additional points to this Court for its consideration.

4 First, despite the charging period of the
5 conspiracy (November, 2002 through April 24, 2004) the
6 evidence indicates that the Defendant terminated his
7 participation in the conspiracy in February, 2004, some
8 2 months prior to the date of its discovery and
9 disclosure. Evidence offered at the time of the
10 sentencing will establish that the Defendant, who had a
11 limited high school education and who predominately was
12 self-taught in computer skills, became involved with a
13 group of persons who were trading software and movies.
14 The Defendant was intensely curious about computers and
15 became more involved. Ultimately, the evidence will
16 show that the Defendant realized that the scope of the
17 criminal activity was significant and that his actions
18 were wrongful. He did not want to continue. He did
19 not want to put his family at jeopardy and ceased
20 participation.
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26 Second, the investigation also showed that the

1 Defendant did not participate in the criminal activity
2 for monetary remuneration. His involvement allowed him
3 to download movies and other entertainment items for
4 his personal use. Defendant concedes that personal use
5 is personal gain. However, Defendant submits that it
6 is a distinction that merits consideration by this
7 Court.
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10 18 USC § 3553(a) directs the Court when imposing a
11 reasonable sentence to consider the types of sentences
12 available. With an offense level of 12, criminal
13 history category of 1, the Defendant falls within Zone
14 C of the Guideline range. The most lenient sentence
15 the Court can give is to split its sentence between
16 imprisonment and home detention. U.S.S.G. § 5C1.1(d).
17 If the Court were to follow the Government's
18 recommendation and impose the low end of the sentence,
19 i.e., 10 months, Mr. Walls would be required to serve 5
20 months in imprisonment. The affects of imprisonment
21 would be devastating and would preclude the Walls
22 taking care of the Down Syndrome child, and would
23 result in the loss of Mr. Walls' job, income and
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1 ability to support his family.

2 In this case, a sentence of 10 months is not a
3 reasonable sentence under 18 USC § 3553(a). Rather,
4 considering the personal characteristics and history of
5 this Defendant, the nature of the offense and his role
6 in the offense, the Defendant submits that a sentence
7 of probation under a Zone A, U.S.S.G. § 5C1.1(b) or a
8 sentence of probation under Zone B, U.S.S.G. §
9 5C1.1(c)(3) that includes home detention as a
10 substitute for imprisonment would be a reasonable
11 sentence under the circumstances and would allow Mr.
12 Walls to continue his 18 year employment with MGM
13 Grand, and continue to provide support for his family
14 and continue his responsibilities as a caregiver of a
15 Down Syndrome child.
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1 RESPECTFULLY SUBMITTED this 29th day of September,
2 2006.

3 HOLDEN & ORESKOVICH, P.S.
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5
6 By/s/ Carl J. Oreskovich
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CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that on the 29th day of September, 2006, I electronically filed the following pleading:

**Memorandum in Support of Motion for Sentence
Outside Sentencing Guidelines**

and caused it to be electronically mailed to the following counsel:

Robert A Ellis
usa-wae-rellis@usdoj.gov

/s/Carl J. Oreskovich
Carl J. Oreskovich

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